

**Editor's note: Reconsideration denied by Order dated Oct. 16, 1985**

SATELLITE 8307193 ET AL.

IBLA 84-791, 84-792,  
84-793, 84-794

Decided March 25, 1985

Appeal from decisions of the Colorado State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers: C-38297, C-38303, C-38321, and C-38322.

Affirmed.

1. Accounts: Payments -- Oil and Gas Leases: Applications:  
Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications:  
Filing -- Oil and Gas Leases: Rentals

Where first-drawn applicants for simultaneous oil and gas leases violate provisions of 43 CFR 3112.6-1, by failing to submit the first year's advance rental payment in the proper office within 30 days of notice to do so, and by failing to offer payment personally or through an attorney-in-fact, the offers must be rejected.

APPEARANCES: Donna M. Brady, Esq., Mineola, New York, for appellants; Philip D. Barber, Esq., Denver, Colorado, for Gene Gillett (drawn with second priority, parcel CO-242).

OPINION BY ADMINISTRATIVE JUDGE ARNESS

In the July 1983 simultaneous oil and gas lease drawing, the following applicants received first priority for parcels CO-236, CO-242, CO-260, and CO-261 respectively: Satellite 8307193, Satellite 8307206, Satellite 8307238, and Satellite 8307210. <sup>1/</sup> These parcels were assigned serial numbers C-38297, C-38303, C-38321, and C-38322, respectively. The Colorado State Office, Bureau of Land Management (BLM), sent the successful applicants the lease offer documents and requests for rental. The transmittal notices each included the following statement:

If the lease is executed by some party other than the named applicant, the relationship between the applicant and party

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<sup>1/</sup> The Satellite appellants are apparently associations of individuals. The file does not indicate who they are. As noted in Satellite 8305136, 85 IBLA 190 (1985), inquiry into the composition of these unidentified organizations may be indicated in an appropriate case.

signing for such applicant should be clearly revealed on the offers (e.g., ABC Corporation, by John Jones, President or XYZ Partnership by Bill Bailey, Managing Partner). If the lease is signed (or the payment made) by an attorney-in-fact, the regulations require that the power of attorney contain particular provisions and that a copy of the power of attorney accompany the offer or payment 43 CFR 3112.6-1. If the offer is to be signed or payment made by an attorney-in-fact, we suggest you contact this [Colorado State] office to insure compliance with the regulations and avoid unnecessary technical rejection of the application or offer. (Telephone No. (303) 837-5551).

FAILURE TO EXECUTE AND RETURN ALL COPIES OF THE ENCLOSED OFFER TO LEASE AND LEASE FOR OIL AND GAS, AND/OR FAILURE TO PAY THE RENTAL DUE TO THIS OFFICE WITHIN 30 DAYS OF YOUR RECEIPT OF THIS NOTICE RESULTS IN AUTOMATIC DISQUALIFICATION OF YOUR APPLICATION. THE EXECUTED LEASES AND RENTAL MUST BE IN THIS OFFICE, NOT JUST IN THE MAIL, ON THE THIRTIETH DAY FOLLOWING RECEIPT OF THIS NOTICE. [Emphasis in original.]

Return receipt cards in the case files indicate the four Satellite applicants received these notices on March 26, 1984. Therefore, the lease documents and rentals were due in the Colorado State Office, BLM, by April 25, 1984.

By separate but identical decisions dated June 19, 1984, BLM rejected each lease offer for failure to fulfill two requirements found in 43 CFR 3112.6-1. 2/ First, an applicant must have filed the signed lease agreement and rental payment in the proper BLM office within 30 days of receipt of notice. Second, the first year's rental should have been paid only by either the applicant personally or by his or her attorney-in-fact. The decisions stated that BLM had not received satisfactory payment in the proper BLM office. Checks submitted on April 23, 1984, as rental payments for the four leases were not collectible. Nor did BLM consider substitute payments by Mountain Empire Energy Group, Inc., made ostensibly on behalf of appellants to the Minerals Management Service (MMS) on April 25, 1984, to be proper.

The four Satellite associations each appealed the rejection of their lease offers and submitted virtually identical statements of reasons on appeal. Because of the identical nature of the facts and issues, these four cases are consolidated on appeal.

In their statements of reasons, appellants contend they timely filed the requisite leases and rentals with BLM on April 23, 1984. After the bank would not pay the first offered checks, John L. Deans delivered substitute checks to MMS on April 25, 1984. These checks were drawn on an account maintained by the Mountain Empire Energy Group, Inc., made payable to MMS, and signed by Deans. Appellants state that Deans relied on statements by

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2/ Although BLM cited the regulation codified in the 1983 edition of the Code of Federal Regulations, it quoted 43 CFR 3112.4-1 (1982) in its decision. Both codifications contain the identical requirements at issue here.

MMS personnel that this procedure was adequate. Appellants conclude they fulfilled the regulatory requirements when Deans, as attorney-in-fact, paid MMS, as agent of BLM. Appended to each statement of reasons are copies of the disallowed original checks and the Mountain Empire checks, BLM receipts for the disallowed checks, and a power of attorney to Deans for each association's parcel.

The power-of-attorney documents are identical, but for the substitution of the appropriate association number and parcel number. Each document recites, quoting Satellite 8307206's power, for example:

POWER OF ATTORNEY

By this act, a certain association known as SATELLITE 8307206 hereinafter called "Principal", appoints John L. Deans residing at 700 East Speer Blvd, Denver, Colorado 80203 as attorney-in-fact to sign simultaneous oil and gas lease offers, statements of interest and of holding and other statements required by the United States Department of the Interior, Bureau of Land Management, in connection with the lease offer on behalf of Principal.

This act is specifically and solely limited to the signing of the oil and gas lease offers, statements of interest and of holding and other statements required by the United States Department of the Interior, Bureau of Land Management, in connection with the lease offer, and covers no other authority whatsoever.

Principal waives any and all defenses which may be available to him to contest, negate or disaffirm the actions of the attorney-in-fact.

The attorney-in-fact is prohibited from filing offers on behalf of any other participant in the July 1983 simultaneous oil and gas drawing for parcel C-38303.

This power of attorney shall not be effected [sic] by the subsequent disability or incompetence of the Principal.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal this 24th day of April, 1984.

John L. Deans  
Signature of Principal  
(Nominee of Satellite 8307206)

Name of Nominee:  
JOHN L. DEANS

This remarkable document is commented upon by Gene Gillett, who received second priority in the drawing for parcel CO-242 (C-38303), drawn with first priority by Satellite 8307206. Gillett asserts that the rental was never properly paid. In addition, he questions whether the power-of-attorney (quoted above in full) was submitted with the offer, pursuant to 43 CFR 3112.6-1(b)(1)(ii). Even if it was properly submitted, he contends it is drawn too narrowly to satisfy 43 CFR 3112.6-1(b)(1)(i) and, finally, he points out that it is nonsensical since it purports to delegate authority from Deans to himself on behalf of Satellite 8307206 to act for the association.

[1] When a simultaneous oil and gas lease applicant is notified that it has qualified to file an oil and gas lease offer, i.e., the executed lease agreement accompanied by the first year's rental payment, the offer must be filed in the proper BLM office within 30 days of the date of receipt of notice. 43 CFR 3112.6-1. Failure to file in a timely manner results in rejection of the offer. 43 CFR 3112.5-1(c). The signed lease agreements and payments in these four cases were due in the BLM Colorado State Office by April 25, 1984.

The first checks appellants submitted arrived at the Colorado State Office timely but were dishonored by the bank. Absent proof of wrongful dishonor by the drawee, where payment of the first year's advance rental is dishonored and returned by the drawee, BLM must reject the offer. Mark A. Emmons, 76 IBLA 262 (1983); Kenneth R. Lewis, 70 IBLA 112 (1983). Appellants have not contended that the bank wrongfully dishonored the first checks.

The substitute checks provided by Deans were delivered to an MMS office rather than to BLM. MMS is a separate agency of the Department of the Interior. The MMS office was no more a "proper office" for delivery within the meaning of 43 CFR 3112.6-1, than a BLM office other than the Colorado State Office would have been. Cf. Jerry W. Wolf, 70 IBLA 131 (1983) aff'd, Civ. No. 83-1065 (D.D.C. May 15, 1984). 3/ Statements to the contrary by MMS personnel do not affect the regulatory scheme to create any rights not authorized by law. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); 43 CFR 1810.3(c). In this case, however, where the Satellite associations had received actual notice of the filing requirements which stated the consequence of failure to meet the requirements, reliance upon another agency's personnel for advice to the contrary would have been foolhardy indeed.

We find that BLM did not receive proper payment of the first year's rental payments as required by 43 CFR 3112.6-1. Therefore, BLM correctly rejected these four offers. 43 CFR 3112.5-1(c).

In addition, appellants' offers of payment violate the attorney-in-fact provision of the regulation. As the BLM decisions point out, the first

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3/ As this Board observed in Gretchen Capital, Ltd., 37 IBLA 392, 394 (1978), "The need to conduct business at the [land] office having appropriate jurisdiction has been long recognized. See, e.g., Matthews v. Zane, 7 Wheat 164, 5 U.S. 244 (1822)."

year's rental could be paid only by the applicant personally or by an attorney-in-fact. 43 CFR 3112.6-1(a). <sup>4/</sup> The powers-of-attorney appellants submit to establish authorization to pay rental on behalf of the Satellite associations are dated April 24, 1984, 9 months after the oil and gas lease drawing to which each refers and 1 day prior to submission of the substitute rental checks. These documents appointing Deans as attorney-in-fact are signed by Deans. Deans thus appointed himself attorney-in-fact for the four applicants, although his relationship to them is not shown. If he was already authorized to sign as a principal, the powers-of-attorney were unnecessary. If not, then the documents are, as Gillett contends, without effect. In either case, appellants have not shown that they have complied with the provisions of 43 CFR 3112.6-1. It now appears their application is similar in some respects to that considered in Maurice Coburn (On Reconsideration), 82 IBLA 112 (1984), where numerous errors were found which cumulatively created ambiguity requiring rejection of an application for an oil and gas lease.

Appellants have not satisfactorily explained either Deans' relationship to them or the relationship to them or Deans of Mountain Empire Energy Group, Inc., on whose account these checks were drawn. If there was here a failure to disclose all interested parties, as appears possible, appellants also have not fulfilled the requirement to show the identity of the real party in interest of 43 CFR 3112.2-1(b). This would also result in rejection of the offer. 43 CFR 3112.5-1(a); see C. H. Postlewait, 83 IBLA 156 (1984), <sup>5/</sup> where, on appeal, it became apparent that the real applicant was a company for whom the application had been made without prior disclosure that it was the real party in interest. The circumstances of the powers-of-attorney Deans attempted to use in these applications raise similar questions about the identities of the Satellite associations and the identities of the persons who have an interest in these applications.

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<sup>4/</sup> After BLM issued its decisions in these cases, this requirement was deleted, effective July 30, 1984. 49 FR 26920 (June 29, 1984).

<sup>5/</sup> As Gillett states in his answer to Statement of Reasons at 2, 43 CFR 3112.6-1(b)(1)(i) requires that powers-of-attorney prohibit attorneys-in-fact from filing offers "on behalf of any other participant." In Satellite 8305128, 84 IBLA 74 (1984), we affirmed the rejection of an offer for failure to establish that this requirement had been included in a power-of-attorney. Each power-of-attorney submitted here restricted Deans, after the fact, from filing offers on behalf of any other participant in the July 1983 simultaneous oil and gas lease drawing for a particular parcel. Here, Deans acted for all four associations with respect to parcels in the same drawing. However, he purported to act only to submit rental payments. Because he apparently did not file applications or sign offers for these parcels, we need not now determine the effect of the provision restricting his authority only with respect to particular parcels under 43 CFR 3112.6-1(b)(1)(i).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Colorado State Office are affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

R. W. Mullen  
Administrative Judge

